United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

ORIGINAL

No. 75-4089
No. 75-4121

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

AMERICAN BROADCASTING COMPANIES, INC., CBS, INC., and NATIONAL BROADCASTING COMPANY, INC.,

Petitioners,

and

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,

Intervenor,

vs.

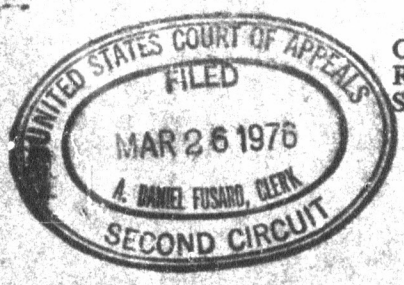
NATIONAL LABOR RELATIONS BOARD,

Respondent.

(Continued on inside cover)

On Petition for Review and Application for Enforcement of an Order of the National Labor Relations Board.

BRIEF FOR THE
AMERICAN BROADCASTING COMPANIES, INC.,
CBS, INC. AND
NATIONAL BROADCASTING CO., INC.



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WRITERS GUILD OF AMERICA, WEST, INC.,

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Nos. 75-4089, 75-4121

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BRIEF FOR THE
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NATIONAL BROADCASTING CO., INC.

STATEMENT OF THE ISSUES PRESENTED.

1. Whether the Guild violated § 8(b)(1)(B) of the Act by threatening and coercing its supervisor-members with fines and blacklisting as punishment for performing their normal managerial duties (which duties include the resolution of grievances and/or collective bargaining) during a strike.

2. Assuming that the Guild did in fact violate § 8(b)(1)(B), whether the remedy adopted by the Board is adequate.

STATEMENT OF THE CASE.

I.

Preliminary Statement.

In these consolidated cases, the Charging Parties and the National Labor Relations Board (the "Board") have respectively petitioned for review and applied for enforcement of the Board's decision reported in 217 NLRB No. 159, in which Members Jenkins and Penello, with Member Fanning dissenting, determined that Respondent Writers Guild of America, West, Inc. (the "Guild") violated Section 8(b)(1)(B) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 158(b)(1)(B), by its conduct during a strike.

In No. 75-4089, Charging Parties American Broadcasting Companies, Inc., CBS, Inc. and National Broadcasting Company, Inc. (hereinafter collectively referred to as the "Networks") have petitioned for review of the Board's decision pursuant to Section 10(f) of the Act, 29 U.S.C. § 160(f). The Association of Motion Picture and Television Producers, Inc. (the "Association") has intervened in this action. In No. 75-4121, the Board has applied for enforcement of

the same order pursuant to Section 10(c) of the Act, 29 U.S.C. § 160(e), and the Networks have intervened.

The Networks comprise a multi-employer unit for the purpose of collective bargaining with the Guild with respect to employees who render writing services in the preparation of materials for tape and film programs broadcast nationally by the Networks, as well as for motion pictures produced by the Networks for either theater exhibition or broadcast. (Appendix (hereinafter "A"), p. 9, ¶ 8(b) and p. 24, ¶ 1.) Until March 4, 1973, the Networks and the Guild were parties to a collective bargaining agreement covering that unit entitled "Writers Guild of America Theater and Television Film Basic Agreement of 1970-Networks." (General Counsel's Exhibit (hereinafter "GCX") 9; hereinafter the "WGA-Network Film Agreement.")

The Networks also comprise a multi-employer unit for purposes of collective bargaining with the Guild with respect to freelance writers who write material for live, nationally-broadcast television programs produced by the Networks. (A, p. 10, ¶ 8(c) and p. 24, ¶ 1.) Until February 13, 1973, the Networks and the Guild were parties to a collective bargaining agreement covering that unit entitled "1971 Writers Guild of America Television Freelance Minimum Basic Agreement" (GCX 10, hereinafter the "WGA-Network Live Agreement").

Charging Party Association is an incorporated association of employers in the motion picture-television production industry. Until March 4, 1973, the Association and the Guild were parties to a collective bargaining

agreement entitled "Writers Guild of America 1970 Theatrical and Television Film Basic Agreement." (GCX 2; hereinafter the "WGA-Association Basic Film Agreement.")[1]

In March of 1973 the Guild commenced a four month economic strike against the Networks, the Association members, and various independent film production companies. In anticipation of and during the course of said strike the Guild attempted, by means of pervasive and widely-publicized written and oral threats of fines and blacklisting, to coerce various management personnel who were members of the Guild to cease performing their regular managerial functions during the strike. These threats were followed by disciplinary trials and fines.

The General Counsel issued a complaint against the Guild under § 8(b)(1)(B) of the Act based upon this conduct. During the course of the hearing before the Administrative Law Judge, the Guild admitted or stipulated to all of the facts with respect to its own conduct, but denied that the supervisory "hyphenate" personnel involved were either supervisors or representatives of management within the meaning of § 8(b)(1)(B). However, in its Brief in Support of Exceptions before the Board, the Guild admitted that the hyphenates are supervisors and that all hyphen-

[1]The evidence with respect to the conduct of the Guild as well as the legal status of the management personnel threatened and disciplined by the Guild is generally applicable to all Charging Parties because virtually all of the television-motion picture production industry was involved in the labor dispute, the pertinent provisions of the various collective bargaining agreements are virtually identical, and because the structure and function of the production units involved is fairly standardized. However, the discussion in this Brief will be limited in scope to the immediate situation of the Networks.

ates except story editors have grievance adjusting responsibilities. (A, p. 118, ¶ 1.) But the Guild maintained that there is no evidence that producers and story editors resolve grievances of writers, and it contended that such a factor has legal significance.

In his Decision and Order the Administrative Law Judge found that the Guild's threats and conduct did constitute clear and flagrant violations of § 8(b)(1)(B), and this decision was affirmed and adopted by the Board. In Part I of the Argument herein, the Networks will demonstrate that the Board's decision is clearly supported by the record and is in complete accord with relevant Board and court decisions.

In addition, the Networks filed certain limited cross-exceptions to the Administrative Law Judge's Decision and Order which were not upheld by the Board. These cross-exceptions related to the proper remedy for the Guild's violation of the Act. Part II of the Argument herein will demonstrate that the Board abused its discretion in not adopting the additional remedies proposed by the Networks, and that the remedies adopted are inadequate to effectuate the purpose of the Act.

II.

Statement of Facts.

A. The Networks' Management Personnel.

At all times relevant hereto, each of the Networks employed persons as producers, directors, executive producers, associate producers, producer-directors, research directors, executive assistants to the vice-president, vice-presidents for program production, vice-presidents for production, vice-presidents for program development, general programming executives, managers

of film programs, story editors, executive story editors, and executive story consultants. (A, pp. 10-11, ¶ 9(a) and pp. 24-25, ¶ 3.) Some of the persons so employed by the Networks were also Guild members (A, pp. 24-25, ¶ 3; GCX 3), having voluntarily retained membership following their promotions from the bargaining unit (*e.g.*, Transcript of Hearing before the Administrative Law Judge (hereinafter "Tr."), p. 642). The WGA-Network Film Agreement expressly excludes these supervisory classifications from the bargaining unit and union security clause:

> ". . . [T]his Basic Agreement shall not, nor is it intended to cover the services of Producers, Directors, Story Supervisors, Composers, Lyricists, or other persons rendering services in a bona fide nonwriting capacity except to the extent that such services consist of writing services covered under this Article 1, Section B 1(a)(2) and Section C 1(a)(3). . . ." (GCX 9, p. 2; *cf.* pp. 6, 8.)

Persons who are employed in the above-mentioned management positions and who have retained their Guild membership are frequently referred to within the television-motion picture production industry as "hyphenates." This term reflects their dual capabilities and past services (*e.g.*, writer-producer, writer-director, writer-executive) or in some cases their dual or multiple guild memberships, but does not denote their actual capacities or duties. (Tr. pp. 383-84, 584-85, 642, 670-72, 752.) It is not uncommon for such persons to resume writing temporarily or permanently if their management duties terminate when, for example, a program series is cancelled. (Tr. p. 1119.)

Executive producers, producers, associate producers, directors and executive story consultants (also known

as story editors or executive story editors) together constitute the primary management and supervision group for any television or motion picture production unit. Their services are expressly excluded from the coverage of the WGA-Network Film Agreement, even if they perform various writing services such as cutting script material to keep a program within its prescribed time limits and the writing of "bridging" material necessitated by said cuts, changes in technical or stage directions, script revisions necessary for legal clearance and series continuity acceptance, minor changes in dialogue, script changes necessitated by unforeseen contingencies, and, in certain circumstances, any changes in dialogue, narration or action so long as such changes are not "significant" revisions in plot, story line or interrelationship of characters. (Such services are known in the industry as the "(a) through (h)" services; GCX 9, pp. 2-4, 7-9.)

The executive producer and producer have complete budgetary, personnel, and creative authority, responsibility and control over the entire production process from idea inception through final post-production and marketing stages. (Tr. pp. 547-48, 838-39.) These duties entail significant financial responsibility; for example, the executive producer and producer of "Gunsmoke" for CBS, Inc. control a $6 million yearly budget in producing 24 one-hour television film segments. (Tr. pp. 547-48.)

The executive producer and producer begin their efforts by determining, along with their executive story consultant, what kinds of stories they are going to use. The executive story consultant, who has previously interviewed and perhaps read material from many writers who are seeking freelance employment, effectively

recommends to the producer and executive producer which writers to employ. The executive story consultant next negotiates with each writer the terms of the writer's employment. (Tr. pp. 467-69.) Each writer then writes a story outline which is read by the executive story consultant, the producer, and the executive producer. The latter three then meet and discuss the project, and thereafter the executive story consultant communicates to each writer the suggested changes in plot, theme, setting or characters. The writers then proceed to write the screenplay with editing assistance from the executive story consultant. (Tr. pp. 569-70, 666-67.) The executive story consultant also effectively recommends the discharge or "cut-off" of a writer, and, after a final decision is made by the producer or executive producer, the executive story consultant will advise the writer as to the action taken. (Tr. pp. 571-72.)

The executive story consultant also has broad authority in resolving grievances of writers who are working under his direction (Tr. pp. 535-36, 569-71), including disputes as to the necessity for, and creative approach to, a rewrite (Tr. pp. 69-70), and the assignment of credits. (Tr. p. 471.) If a writer is not satisfied with executive story consultant's disposition of a grievance, the producer will be called upon to adjust the matter. (Tr. pp. 165-66.)

The ability of executive producers, producers, and executive story consultants to attract, work harmoniously with, and retain good writers is essential to the performance of their own duties, and determines in large part their own employment value to employers now and in the future. (Tr. pp. 230-31, 690-92, 844-47.)

Once the script has been finalized, the executive producer and producer determine the location where each segment is to be filmed, select the director for each program segment, and, in consultation with the director, determine which actors and other personnel to hire. (Tr. pp. 547-48.)

When an episode is to be shot on location outside of the Southern California area, the producer is responsible for making the local labor arrangements, including the negotiation of collective bargaining contracts and personal service contracts. He is also responsible for overseeing and determining the budget for such matters as transportation, accommodations, wardrobe, and makeup. (Tr. pp. 559-61.)

During the period when a program is being filmed, the director is in immediate charge of all employees on the set, while the producer or executive producer generally supervises the direction, frequently meeting with the director to view the "dailies" (freshly developed film footage) and to discuss the film's direction. (Tr. p. 548.) The executive producer and producer have final authority as to the content of the final print. (Tr. p. 548.)

The producer and executive producer have extensive responsibility and authority in resolving grievances on a daily basis (Tr. pp. 61, 269-71, 313, 462-64, 548-51, 839-40), including claims by extras for additional pay (Tr. pp. 400-01), grievances concerning the adequacy of dressing room facilities, wardrobe, and transportation (Tr. pp. 400-01, 851-53), jurisdictional disputes (Tr. pp. 61-62, 203-05), creative differences between editors and writers (Tr. p. 314) and other grievances involving writers. (Tr. pp. 165-66.) For

example, John Mantley, who is employed by CBS, Inc. as an executive producer, resisted to the point of arbitration a $25,000 claim by the Stuntmen's Union for residuals arising out of the use of some film footage previously shot for the theatrical feature film "Little Big Man." (Tr. pp. 548-50.) He also settled a grievance by a stuntman who demanded extra hazard pay for a leap into the Rogue River. (Tr. p. 551.)

Associate producers employed by the Networks have primary responsibility for supervising the post-production process, including the printing of all film footage; the procedures used to produce and edit music, sound effects, and dialogue; the various processes used in a film to indicate change of time or location; and the production of titles and credits. (Tr. pp. 561-64.) The associate producer effectively recommends to the producer or executive producer the hiring and firing of employees engaged in the above functions. (Tr. pp. 563-64.) The associate producer also represents his employer in resolving employee grievances and dealing with the daily problems raised by the unions representing the employees under his supervision. For example, at CBS a controversy between two sound-effects unions was resolved by following the associate producer's recommendation that the employees represented by one of the locals be replaced by members of the other. (Tr. pp. 565-67.)

In addition to the above-described production unit supervision, the Networks employ staff production executives, many of whom happen to be Guild members, including a vice-president for production, a vice-president for program development, general programming executives, and a manager of film programs. (GCX

3, p. 6.) The WGA-Network Film Agreement refers to these executives as follows:

> "With respect to signatory Companies, no services of any kind of any executives of Companies which executives have as their principal function the supervision of various television pilots and series and in this connection have the authority to give creative instructions to the producers of such pilots and series and to others connected with the production thereof shall be covered by any provisions of this Basic Agreement." (GCX 9, p. 8.)

The primary function of these executives is to represent the Networks in their dealings with outside production companies from which the Networks purchase motion pictures, television series, and special features. These outside companies are either members of the Association or independent companies. The staff executives serve a liaison function in order to assure timely delivery of programming material which meets Network standards. (Tr. pp. 656, 840.) They work closely with producers for the outside companies in selecting talent and other personnel, supervising script production, and other matters of general importance. (Tr. pp. 640-45, 652-54, 656-58, 680-81, 690-91, 840.) They frequently become involved in the resolution of grievances of personnel employed by these companies. (Tr. pp. 640-42, 840-42.)

In addition, these executives serve an identical function vis-a-vis programs produced directly by the Networks. As such they have resolved grievances and effectively recommended discharge. (Tr. pp. 641-42.)

B. The Guild's Strike Rules and Policies.

In late February of 1973, the Guild prepared, published and distributed to all members, including its members employed in the supervisory capacities discussed hereinabove, its "Rules for the Conduct of Members During a Strike." (A, pp. 12-13, ¶ 11 and p. 24, ¶ 1.) The Rules were expressly made applicable to the hyphenates:

> "24. All members, regardless of the capacity in which they are working, are bound by all strike rules and regulations in the same manner and to the same extent as members who confine their efforts solely to writing." (A, p. 21.)

Other rules reinforced this principle. For example, Rule 14 provides that during a strike members may not read or study any script or literary material "which might have any actual or potential connection with future employment of said members *as writers or otherwise* . . .," and Rule 19 provides that a member may not conduct negotiations with a struck production company for financing a production "or for his participation in such production *in any capacity*." (A, pp. 19-20; Emphasis added.) Rule 26 provides that the term "member" as used throughout the rules encompasses anyone admitted to Guild membership, even if on inactive or withdrawn status. (A, p. 22.)

The Rules prohibit not only the performance of writing services, but also the crossing of a picket line for any purpose (Rule 12; A, p. 19), the purchase of literary material (Rule 11; A, p. 19), the hiring of any writers on behalf of a struck employer (Rule 25; A, p. 22), entering the premises of a struck employer to view any film, including film in production

(Rule 13; A, p. 19), and any "conduct tending to defeat a strike or in any way weaken its effectiveness." (Rule 1; A, p. 17.)

As punishment for the offense just described, the Rules provide for suspension or expulsion from Guild membership, censure, and fines (Rule 29; A, pp. 22-23), and also for blacklisting:

> "30. No member shall work with any individual, including a writer-executive, who has been suspended from Guild membership by reason of his violation of strike rules, or who has been found by the Council to have violated strike rules, in the event no disciplinary action was instituted against such person." (A, p. 23.)

By letter dated February 9, 1973, the Guild's Executive Director Michael H. Franklin scheduled a "special meeting of Hyphenate members" of the Guild for February 15, 1973, in order to discuss "those matters which Hyphenate members consider pertinent" with respect to the negotiations and possible strike action. (Association's Exhibit (hereinafter "AX") 1.) On February 15, 1973, between 100 and 140 hyphenates assembled in response to this notice (Tr. p. 367), and were told by Franklin that the Guild's Strike Rules applied to them as members irrespective of their actual capacities, and that they were forbidden to perform services of any kind during a strike. (Tr. p. 376; A, p. 13, ¶ 12 and p. 24, ¶ 1.)

The Guild's Constitution and By-laws (Art. IV, Sec. 7) (GCX 12(a), p. 15) provides that no resignation of membership is effective until accepted by the governing Council of the Guild, and that the Council may refuse to accept a tender of resignation and may instead

"require the member either to continue his membership for a designated period not to exceed two years or to be expelled in bad standing." At all times relevant hereto, the Guild had a policy of not permitting any member to resign from its membership during the pendency of collective bargaining negotiations with the Networks and for at least six months after the conclusion of such negotiations. (A, p. 30, ¶ 2; AX 2 and 3.)

C. The Strike and Related Threats and Disciplinary Proceedings.

In late February of 1973, representatives of the three Networks met and determined that during the anticipated Guild strike the Networks would not require any of their supervisory personnel to perform writing services. (Tr. p. 1352.) On March 28, 1973, Robert D. Wood, President of CBS Television Network, sent a memorandum entitled "Writers Guild Negotiations" to all supervisory personnel (including those who are listed on GCX 3 as members of the Guild) in which he reviewed the progress of negotiations and the threats by the Guild, and concluded as follows:

> "In the event of a strike and/or the establishment of any picket line, we will expect you to continue to perform as a member of our management team and continue to report for work. If you are a member of the Writers Guild, such membership will not relieve you of your *supervisory* obligations to us but should the Guild attempt to fine you for performing your supervisory obligations to us and institute proceedings to impose such fines, CBS will provide you with a defense to any such proceedings at our cost and will indemnify you against any such fines imposed in such proceedings.

> "You realize that CBS must and will preserve all of its legal rights and remedies if you are in breach of contract or otherwise fail to render your services as a supervisor.
>
> "We undertake this course of action with regret, but we simply must fulfill our contractual and moral obligations." (GCX 28 (emphasis added); A, p. 37, ¶ 18.)

On March 29, 1973, the Guild called an economic strike against the Networks, which was to last almost four months, and established picket lines at the premises of each employer. (A, p. 12, ¶ 10(b) and p. 25, ¶ 4.)

On April 9, 1973, the Guild mailed to each of its members a bulletin entitled "Strike and Discipline" (AX 6; Tr. pp. 937-38), in which the Guild reported that it planned to institute disciplinary proceedings against certain unnamed hyphenates who were suspected of violating strike rules. In that bulletin the Guild also discussed the Section 8(b)(1)(B) charges pending against it:

> "The basis of [the anticipated N.L.R.B. complaint] is the claim that the Guild has no right to discipline 'supervisors.' It *is* proceeding. Trial Boards *will* impose discipline appropriate to the violation." (AX 6; Tr. pp. 937-38.) (Emphasis in original.)

Commencing in late February 1973, various officers and agents of the Guild telephoned numerous hyphenates and threatened that if they failed to support the strike no Guild member would work with or perform services for them at any time in the future. (Tr. pp. 538-39, 739-40, 853-62.)

On April 14, 1973, the Guild formally charged John Mantley, Executive Producer for CBS, with violations of Guild Strike Rules 1, 12 and 13, for having crossed a Guild picket line during the strike. (GCX 7; Tr. pp. 552-53.) The Guild concurrently charged seven other hyphenates employed by Association member-companies and by an independent production company with similar offenses. None was charged with violating any of the many Rules which relate to the performance of writing services.

Also on April 14, 1973, the Guild issued a press release in which it announced the aforementioned charges, and added the following statement:

> "Those convicted will appear on a 'Roll of Dishonor'—according to Guild officials, and be listed in Guild publications 'in perpetuity so that Guild members for years to come will never forget.' A Guild spokesman characterized those members guilty of scabbing as 'pariahs who have betrayed their colleagues.' " (AX 4; Tr. pp. 923-25.)

This statement was immediately quoted in news articles appearing in the *Los Angeles Times* (AX 4b) and in the two motion picture-television daily trade newspapers, *Daily Variety* (AX 4c) and the *Hollywood Reporter* (AX 4a).[2]

By letter dated May 7, 1973, the Guild advised each of its members that its Board of Directors had on April 30, 1973, "rescinded" Strike Rule 30 which had provided for blacklisting of members who violated

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[2]The Guild's Strike Rule 22 provided in relevant part that "A member is chargeable with knowledge of . . . any strike information made known to the entertainment industry through any recognized means of communication such as trade papers, newspapers. . . ." (A, p. 21.)

any Strike Rule. (AX 7.) The May 7 letter admitted that Rule 30 "carries the odious implications of a 'black list.'" On May 10, 1973, the Guild, while purporting to rescind its blacklist rule, caused a news article headlined "WGA REPEALS BLACKLIST RULE AS BOTH SIDES INSIST STRIKE ACCORD MOMENTUM NOT LOST" to be published in the *Hollywood Reporter.* (Respondent's Exhibit (hereinafter "RX") 11; Tr. pp. 1299-1300.) That article added the following qualifications to the purported rescission:

> "A guild official who participated in the board revocation of rule 30 said yesterday he was not certain whether plans for the roll of dishonor would be abandoned in view of the action to avoid the appearance of blacklisting.
>
> " 'What it does affect,' he noted, 'is the rule itself which would make it mandatory, and that, of course, was what the letter [rescinding Rule 30] was about.' "

On June 11, 1973, the Guild conducted an intra-union disciplinary hearing on the charges against John Mantley described hereinabove. The only evidence presented at the hearing with respect to the nature of the services performed by Mantley during the strike was Mantley's uncontradicted declaration that "neither I nor any of my production office staff have performed any writing functions whatsoever," and a declaration to the same effect by the director of "Gunsmoke." (GCX 16N; RX 1 attached thereto.) The Guild stipulated at the hearing in the instant case that it prosecuted the disciplinary cases against the hyphenates without regard to the nature of the services performed by them behind the picket lines. (Tr. pp. 957-58.)

On June 25, 1973, the Board of Directors issued its Decision and Order in the Mantley matter. It found that Mr. Mantley had been given full and timely notice of the Guild's Strike Rules and of the fact that his employer was being struck, and that he "nevertheless crossed a Guild picket line and entered the struck premises of CBS Studio Center to perform services, in violation of the Rules. . . ." It then ordered that he be expelled from Guild membership effective immediately, and that he be fined $50,000 plus the costs of the hearing. (GCX 17f.)

Immediately thereafter, the Guild issued a press release concerning its discipline against Mantley and four other hyphenates which resulted in articles appearing on June 27, 1973, in the *Los Angeles Times* (headlined "WRITERS GUILD FINES, EXPELS 5 WHO CROSSED PICKET LINES") (GCX 32); the *Hollywood Reporter* (headlined "WGA OUSTS FIVE; FINES MOUNT UP TO $127,000") (GCX 33); and *Daily Variety* (headlined "WGA FINES, OUSTS 5 HYPHENATES—50G Slapped on Mantley, Victor; 25G for Blees; Some Say They Won't Pay") (GCX 31).

On October 18, 1973, the Guild filed notices of disciplinary hearings and charges against Ronald Honthaner, Associate Producer for CBS (GCX 15e) and against Leonard Katzman, Producer for CBS (GCX 15f), charging each with having crossed the Guild's picket line during the strike. Identical charges were filed by the Guild on November 6 and 8, 1973, against Philip Barry, Executive Producer for CBS (GCX 22), and against Mark Rosin, General Programming Executive for CBS (GCX 21).

Pursuant to the internal rules of the Guild, John Mantley had, on July 20, 1973, filed a notice of appeal to the full Guild membership of the decision of the Guild's Board of Directors (GCX 23c). The Guild scheduled a general membership meeting for November 12, 1973, in order to hear the appeal of Mantley and eight other hyphenates. (A, p. 34, ¶ 7(a).)

On or about October 26, 1973, the Guild mailed to each of its members a bulletin which detailed the discipline which the Guild's Board of Directors had imposed against Mantley and others, notified the membership concerning the scheduled November 12, 1973 meeting, and explained the effects of expulsion from the Guild. (A, pp. 34-35, ¶ 8.) That bulletin included the following statement:

> "There is obviously a stigma attached to expulsion which might cause individual members of the Guild to refrain from working with such a person." (RX 12.)

This statement was repeated by the Guild in a bulletin dated November 12, 1973, and distributed to all members who attended the membership meeting of that same date. (GCX 24.)

At the November 12, 1973 general meeting, the Guild membership voted to reduce the fine against Mantley from $50,000 to $3,883.48 and to set aside his expulsion from membership. The penalties of the other appealing hyphenates were similarly reduced.

On November 30, 1973, the Guild notified Messrs. Honthaner, Katzman, Barry and Rosin by letter of a decision by the Guild's Board of Directors to stay further disciplinary proceedings pending resolution of the instant National Labor Relations Board proceed-

ings, provided that the affected individuals would agree to waive any statutes of limitation. (A, pp. 34-35, ¶ 13.) By letter dated December 7, 1973, the Guild notified each of its members of its action staying all further disciplinary proceedings against supervisory employees pending final resolution of the NLRB charges in the instant case. (A, p. 36, ¶ 15.) That letter contained the following statements:

> "As you know, there are unfair labor practice charges against the Guild now pending before the National Labor Relations Board. These charges involve the Guild's right to discipline supervisory employees (*i.e.*, executive producers, producers, associate producers, directors and story editors). We believe that we have the right to discipline supervisors, an action which the membership previously affirmed, but the issue is one which ultimately must be decided by the courts. . . ." (RX 16.)

ARGUMENT.

I.

The Guild's Threats and Conduct Clearly Constitute Violations of § 8(b)(1)(B) of the Act.

In his Decision (which was adopted by the Board), the Administrative Law Judge determined that hyphenate Guild members are bona fide supervisors vested with substantial labor relations responsibilities (A, pp. 62-68, 92-93); that during the course of the strike such members performed only their normal supervisory duties (A, pp. 92-93); and that the Guild's threats and acts of discipline constituted violations of § 8(b)(1)(B) of the Act (A, pp. 99-103). It is submitted that the factual findings are clearly and indisputably supported by the record, and that the legal conclusions based thereon are in complete accord with relevant Board and court decisions.

A. The Scope of § 8(b)(1)(B) Since Florida Power.

In arriving at its decision, the Board correctly ruled that § 8(b)(1)(B) prohibits a labor organization from restraining its supervisor-members who are vested with grievance adjusting or collective bargaining responsibilities, from performing normal management and supervisory duties during an economic strike.

The scope of § 8(b)(1)(B) has of course been narrowed with the Supreme Court's affirmance of the decision of the District of Columbia Circuit in *Florida Power & Light Co. v. I.B.E.W., Local 641,* 417 U.S. 790 (1974), affirming 487 F.2d 1143 (D.C. Cir. 1973) [hereinafter "*Florida Power*"]. However, left undisturbed was the judgment of the Board that a union may not discipline a supervisor having labor

relations responsibilities on account of his performance of supervisory duties. As stated by the Court of Appeals for the District of Columbia, sitting en banc:

> "When a supervisor acts as such he is a representative of management, and as such he should be immune from union discipline. The unions participating in the present cases conceded as much at oral argument when they agreed that when a supervisor crosses a picket line to perform *supervisory* work, he remains immune from discipline." *I.B.E.W., Local 641 v. NLRB*, 487 F.2d 1143, 1157 (D.C. Cir. 1973). (Emphasis in original.)

On appeal from the decision of the District of Columbia Circuit, the issue before the Supreme Court in *Florida Power* was purposefully specific and narrow:

> "The question to be decided is whether the unions committed unfair labor practices under § 8(b)(1)(B) when they disciplined their supervisor-members for crossing the picket lines and *performing rank-and-file struck work* during lawful economic strikes against the companies." (Emphasis added.) 417 U.S. at 792.

After reviewing the legislative history of § 8(b)(1)(B) and concluding that Congress intended to restrain union conduct which is likely to influence an employer's selection of his representatives, the Court issued an equally narrow holding:

> "[W]e hold that the respondent unions did not violate § 8(b)(1)(B) of the Act when they disciplined their supervisor-members for performing rank-and-file struck work." *Id.* at 813.

As Justice White noted in dissent, the majority did not intend to further expand the ability of unions to conscript supervisor-members during an economic strike by requiring such individuals generally to withhold their labor:

> "I do not read the Court to say that § 8(b)(1)(B) would allow a union to discipline supervisor-members for performing supervisory or management functions, as opposed to customary rank-and-file work, during a labor dispute." *Id.* at 815 n.2.

The right of supervisory employees to continue to represent their employers during strike conditions was expressly recognized by the Court in defining the nature of the § 8(b)(1)(B) unfair labor practice:

> "The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of § 8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." *Id.* at 804-5.

On the facts as presented in *Florida Power,* the unions therein were innocent of § 8(b)(1)(B) violations since it was:

> "certain that these supervisors were not engaged in collective bargaining or grievance adjustment, or in any activities related thereto, when they crossed union picket lines during an economic strike to engage in rank-and-file struck work." *Id.* at 805.

It is therefore manifest that by its decision in *Florida Power,* the Supreme Court did not intend to disturb Board decisions dealing with situations other than the performance of struck work by supervisors.

Section 8(b)(1)(B) has been applied by the Board in two distinct fashions. Until 1968, charges of § 8(b)(1)(B) unfair labor practices brought before the Board involved union conduct having the effect of coercing an employer into dismissing labor relations personnel hostile to unions or appointing personnel favorable to organized labor.[3] In 1968, the Board construed § 8(b)(1)(B) to prohibit union conduct not calculated to directly influence an employer's selection of his labor relations supervisors, but rather having the likely effect of determining the manner in which such personnel discharged their responsibilities.[4]

A careful examination of *Florida Power* reveals that the Supreme Court was concerned not with these lines of authority, but with subsequent Board decisions holding § 8(b)(1)(B) to have been violated by union discipline of a supervisor-member for the performance of rank-and-file work. Applying the *Oakland Mailers* construction of § 8(b)(1)(B), the Board had concluded in these latter decisions that supervisory personnel, as members of the employer's management team, discharged labor relations responsibilities by performing bargaining unit work during an economic strike.

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[3]*See, e.g., Orange Belt District Council of Painters No. 48,* 152 N.L.R.B. 1136 (1965); *Warehousemen, Drivers & Helpers, Local 986,* 145 N.L.R.B. 1511 (1964); *Los Angeles Cloak Joint Board,* 127 N.L.R.B. 1543 (1960).

[4]*San Francisco-Oakland Mailers Union No. 18,* 172 N.L.R.B. 2173 (1968) (Board found a violation of § 8(b)(1)(B), predicated upon union discipline of a foreman for the manner in which he interpreted and applied a collective bargaining agreement).

Were a union permitted to discipline these supervisor-members, the Board had reasoned, employers would effectively be deprived of representation by supervisory personnel who were selected to act in grievance resolving or collective bargaining capacities. (*See, e.g., Local 2150, I.B.E.W.*, 192 N.L.R.B. 77, 78 (1971), *enforced*, 486 F.2d 602 (7th Cir. 1973), *vacated*, 418 U.S. 902 (1974).)

It was solely for the purpose of setting aside these latter Board decisions that the Supreme Court rendered its opinion in *Florida Power*. The Court did not undertake to reject the Board's construction of § 8(b)(1)(B) that union conduct may be prohibited if it jeopardizes the employer's autonomy in selecting labor relations personnel either directly or by restraining a supervisor-member from independently discharging his labor relations responsibilities. Rather, the Court disagreed with the Board's judgment that union discipline of a supervisor-member for performing struck work would constrict the discretion of an employer in choosing his grievance adjusters and collective bargainers.

Properly interpreted then, the Supreme Court's reversal of the Board in *Florida Power* represents a narrow disagreement over the potential impact of a discrete pattern of union conduct rather than a fundamental difference as to the proper scope of § 8(b)(1)(B). Left undisturbed by the Supreme Court's decision are Board applications of the statute prohibiting union discipline which would potentially interfere with the employer's right to select collective bargainers or grievance resolvers of his choosing. Thus, decisions such as *New York Typographical Union No. 6*, 206 N.L.R.B. 294, 84 L.R.R.M. 1555 (1973), reconsidered and affirmed in light of *Florida Power*, 216 N.L.R.B.

No. 147, 88 L.R.R.M. 1384 (1975), remain good law. In that case, the Board held that a union could not properly discipline a production manager who continued working during a strike, "performing regular supervisory functions during the picketing," when his regular duties included the adjustment of grievances. Equally viable are Board decisions prohibiting discipline which is in response to a member's performance of his labor relations functions and which is likely to influence the manner in which such duties are discharged in the future.

As is documented elsewhere in this Brief, no hyphen ate performed bargaining unit work for the duration of the Guild's strike.[5] Accordingly, the *Florida Power* holding cannot serve to legitimize the course of conduct pursued by the Guild herein.

It is equally clear that as measured by a strict and literal interpretation of § 8(b)(1)(B), the Guild committed unfair labor practices by depriving the Charging Party employers of the grievance adjusting and collective bargaining services of the hyphenate Guild members. In the motion picture and television film industry, as in most industries, there exist few if any management personnel with the single responsibility of resolving labor grievances. For the most part, these responsibilities are vested in each supervisory employee, and disputes are handled and resolved as they arise by those immediately overseeing that phase of production, as an inseparable element of their regular daily duties. (See "Statement of Facts," *supra* at pp. 8-10.) Hyphenates and all other supervisors are expected to give employee grievances their immediate attention

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[5]See p. 17, *supra,* and p. 29, *infra.*

to prevent any development which might interrupt production. (Tr. pp. 464-67, 735-36.)

By its attempt to coerce hyphenates into honoring union picket lines, the Guild sought to force hyphenate members to withhold from their employers all supervisory services, including grievance resolving and collective bargaining. To the extent it was successful, the natural effect of this coercion was to eliminate the employers' capacity to resolve labor grievances, since hyphenates would be unavailable in the event that disputes arose involving non-striking employees both within and outside the Guild bargaining unit. Thus, the Guild's conduct deprived the Charging Party employers of all services of those supervisor-members specifically selected by management to perform grievance resolution—the precise abuse which § 8(b)(1)(B) was intended to prohibit and remedy.

As the Board so correctly surmised, this is not a case in which § 8(b)(1)(B) has been employed merely to preserve supervisor loyalty to an employer. To the contrary, the conduct of the Guild in disciplining supervisor-members presented a real and immediate threat to the Networks' autonomy in selecting and procuring sensitive and essential grievance resolution services.

B. Factual Basis for § 8(b)(1)(B) Violations.

The Guild excepted to the Decision of the Administrative Law Judge on the asserted ground that neither producers nor story editors resolve grievances involving writers, contending that § 8(b)(1)(B) proscribes coercion by a union only against supervisors who resolve grievances of employees *it* represents. This exception lacks merit for the following reasons:

First, as set forth in the "Statement of Facts" (*supra*, at pp. 8-10), there is abundant evidence in the record to support the finding that producers and story editors are charged with responsibility for adjusting grievances of writers as well as non-writers. Secondly, there is no statutory or decisional support for the Guild's exception; § 8(b)(1)(B) contains no such limitation, and the Board has properly applied that section without regard to whether the management representative involved has any dealings with employees represented by the offending union. See, *e.g., Masters, Mates and Pilots,* 197 N.L.R.B. 400 (1972).

Acceptance of Respondent's strained construction of § 8(b)(1)(B) would no doubt engender conduct which the statute was intended to prohibit. For example, each of two cooperating unions could lawfully coerce an employer into selecting labor relations personnel favorable to the other labor organization. Alternatively, although not benefiting immediately, a labor organization might be tempted to influence an employer's selection of grievance adjusters and collective bargainers for the purposes of generally weakening the employer and concomitantly increasing the bargaining strength of the union.

The Guild may contend, as it did to the Board, that by performing the "(a) through (h)" services during the strike the hyphenates lost the protection of § 8(b)(1)(B) as interpreted in *Operating Engineers Local 9,* 213 N.L.R.B. No. 92, 87 L.R.R.M. 1247 (1974). This exception lacks merit for the following reasons:

First, neither in its Strike Rules nor its subsequent conduct, including the disciplinary trials, did the Guild

distinguish between "(a) through (h)" functions and any other management duties of the hyphenates. No hyphenate was charged with performing writing functions during the strike or of performing struck work; by the Guild's own admission, its prosecutor and disciplinary panels proceeded without regard to the nature of the services performed, and regarded crossing the picket line for any purpose as grounds for discipline. (Tr. pp. 957-58.)

Secondly, the Board's decision in *Operating Engineers* is in no way inconsistent with the Decision of the Board herein. The supervisor-member in *Operating Engineers* was disciplined for performing rank-and-file work during an economic strike, albeit bargaining unit work which the union had apparently tolerated his performing in the past. In contrast, the supervisor-members herein disciplined by the Guild at no time worked in the stead of striking writers. As the Administrative Law Judge found,

> "The evidence is that the hyphenates who worked during the strike performed the normal functions of the primary positions for which they were employed prior to the strike, e.g., director, producer, story editor, etc. . . ." (A, p. 80.)

As previously noted, "(a) through (h)" functions were contractually excluded from the definition of bargaining unit work. Article 14, paragraph A of the WGA-Network Film Agreement specifically provided that the terms of employment of members engaged in capacities "other than as a writer . . . shall not be subject to this Basic Agreement." Article I, paragraphs B.1.a and C.1.a of the Agreement provided that the performance of (a) through (h) duties "by Producers, Direc-

tors, Story Supervisors . . . [or] other employees . . . *shall not be subject to this Basic Agreement and such services shall not constitute such person a writer hereunder.*" (Emphasis added). Accordingly, it is beyond dispute that neither the Guild nor the Networks deemed "(a) through (h)" functions to be bargaining unit work, and that the discharge of such responsibilities by hyphenates with labor relations responsibilities during the Guild's strike could not serve as the basis for permissible union discipline.

II.

In View of the Nature of the Guild's Conduct in This Case, the Remedy Recommended by the Administrative Law Judge Is Inadequate.

The instant case is unique among reported 8(b)(1)(B) cases in that in addition to threats and impositions of fines, suspensions and expulsions, the Guild also attempted to coerce supervisors from performing their ordinary duties by threatening members with the loss of present and future employment and livelihood. This conduct commenced with publication of Strike Rule 30 which forbade all members to "work with" any individual, "including a writer-executive" who has been found to have violated the Strike Rules. The calculated effect of Rule 30 was to make hyphenates believe that if they worked during the strike they would not thereafter be able to hire or retain writers. The impact of such a threat can only be appreciated with reference to the strong dependency of the hyphenates upon production of quality scripts—which means that they must, in order to function at all, be able to attract, work harmoniously with and retain competent writers. If a producer, executive producer or executive

story consultant cannot do this, he is worthless to his employer and to all prospective employers. (Tr. pp. 569-70, 666-67.)

The Guild may contend that Rule 30 was only designed to operate during the strike. It is not so limited by its terms. Compare Strike Rules 9, 19, 23, and 25. (A, pp. 18, 20, 21 and 22.)

The blacklist threat was on many occasions repeated orally to hyphenates by Guild agents and officers, and by a Guild press release carried in the trade newspapers threatening that hyphenates convicted of Strike Rule violations would appear on a "Roll of Dishonor" and "be listed in Guild publications in perpetuity so that Guild members will never forget." (AX 4.) Three weeks later, on May 7, 1973, the Guild, properly referring to Rule 30 for the first time as a "blacklist," purported to rescind the Rule, but then on May 10, 1973, admitted in another press release that the purported "rescission" of Rule 30 was only intended to remove the "mandatory" nature of the Rule. (RX 11.) Thus the Guild policy became one of encouraging a voluntary rather than a mandatory blacklist. Apparently this voluntary policy remains in effect today. Pertinent in this regard is the final Guild communication to its membership of record herein, in which the Guild stated that "[t]here is obviously a stigma attached to expulsion which might cause individual members . . . to refrain from working with such a person." (RX 12.)

In view of the particularly vindictive pattern of illegal conduct which the Guild directed against hyphenate-Guild members, the Administrative Law Judge recommended, and the Board adopted, a number of

affirmative action remedies requested by the Charging Parties. However, a number of suggested remedies were not incorporated into the Board's order. In particular, the Charging Party Networks urged that disciplined hyphenates and their employers be reimbursed for reasonable legal fees and other expenses incurred in their defense of union disciplinary charges; that the union be required to read to its assembled membership at two consecutive membership meetings a notice of compliance; and that the Guild be required to publish a notice of compliance in the "Hollywood Reporter" and "Daily Variety" for a period for sufficient length (minimum of three consecutive weeks) to counteract the Union's widespread dissemination of its threats and other illegal conduct. It is submitted that the Board abused its discretion in not ordering these additional remedies in view of the Guild's flagrant violation of the Act.

Although the Board generally has broad discretion to devise remedies for violations of the Act, that discretion is limited by the mandate of Section 10(c) of the Act, 29 U.S.C. §160(c), which requires the Board "to take such affirmative action . . . as will effectuate the policies of this subchapter." This "affirmative action" clause "is not a mere charter of authority that the Board has the option to exercise or ignore. It is . . . a 'broad command.'" *International Union of Electrical Workers v. N.L.R.B. (Tiidee Products, Inc.—I)*, 426 F.2d 1243, 1249 (D.C. Cir. 1970), *cert. den.* 400 U.S. 950 (1970). Thus it has been found in a number of cases that the Board abused its discretion by not ordering remedies sufficiently strong to effectuate the policies of the Act. *Tiidee Products I, supra,* at 1250-1253; *Food Store Employees Union,*

Local No. 347 v. N.L.R.B. (Heck's), 476 F.2d 546, 550-554 (D.C. Cir. 1973).

A recognized goal of the Act in the case of unfair labor practices is to restore the *status quo ante*, such that the position of the injured parties will be restored, as nearly as possible, to what it would have been had the unfair labor practices not occurred. *International Union of Electrical Workers v. N.L.R.B. (Tiidee Products, Inc.—III)*, 502 F.2d 349, 356 n.24 (D.C. Cir. 1974), and cases cited therein. This was, in fact, the remedy recommended by the Administrative Law Judge in this case (A, p. 106), and it is all that the Networks seek. First, the Networks requested reimbursement of costs incurred in defending intra-union disciplinary charges. Although the Board properly describes this requested remedy in its opening brief to this court, the cases it relies upon to support denial of the remedy all involve requests for attorney's fees incurred in Board and court proceedings. The Networks do not request such relief, but rather seek only those fees necessarily incurred in defending the illegal internal union disciplinary charges, a remedy akin to the typical "make whole" relief traditionally ordered by the Board. In refusing without discussion to order such relief, it is submitted that the Board did not properly effectuate the goal of restoring the *status quo ante*.

A second requested remedy would require the union to read a notice of compliance to its members at two consecutive membership meetings. In *Local 261, Lithographers Union*, 195 N.L.R.B. 408, 411 (1972), this remedy was ordered by the Board for a union's violation of Section 8(b)(1)(B) in much less compelling circum-

stances than those presented herein. The union in that case did not resort to such extreme measures as blacklisting, but rather fined and expelled a single supervisor for crossing a picket line. The Board found this remedy proper "to dissipate the coercive effects of the unfair labor practices" and to serve "the educational function of informing the members that the discipline approved and ratified by them constituted an unfair labor practice." 195 N.L.R.B. at 408. In the instant case, the Guild's members similarly ratified the fines imposed on the hyphenates at a general meeting. In light of the much more extensive union coercion present herein than in *Lithographers Local 261*, it is submitted that the Board abused its discretion in not ordering this remedy.

Finally, the Networks requested that the notice of compliance be published in the trade papers for three weeks rather than the single week ordered by the Board. A similar three week publication period was imposed by the Board's order in *Hod Carriers Local 916*, 145 N.L.R.B. 565, 571 (1963). Moreover, this remedy is particularly appropriate in the instant case because the Guild through its press releases caused wide and prominent publicity of its threats and other illegal conduct to be printed in *Daily Variety* and *Hollywood Reporter* (and, at least on one occasion involving the "Roll of Dishonor" blacklist, in the *Los Angeles Times*), and because its Strike Rule 22 specifically charged all members with constructive notice of the content of such publications. Accordingly, it is submitted that the Guild should be required to give the Board's remedial notice distribution and publicity comparable to that given the Guild's illegal conduct. Only thus can the *status quo ante* be restored.

In summary, the severe discipline threatened and carried out by the Guild against the hyphenates without regard to the nature of services performed during the strike went far beyond the weapons unions normally use against their members. The Guild's blacklist, by threatening the hyphenates with destruction of their careers, threatened the affected employers with a permanent loss of designated representatives for purposes of collective bargaining and resolving grievances. Only the strongest remedial measures can ensure the hyphenates' continued performance of labor relations duties during future labor disputes. It is therefore submitted that the Board abused its discretion in not ordering remedies sufficiently strong to effectuate the policies of the Act.

CONCLUSION.

Based upon the foregoing, it is submitted that the Board's order should be enforced with the sole modification that the additional remedies proposed by the Networks should also be ordered.

DATED: March 25, 1976.

Respectfully submitted,

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ADDENDUM A

29 U.S.C. Section 158(b)(1)(B) provides as follows:

> "It shall be an unfair labor practice for a labor organization or its agents to restrain or coerce an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances".

29 U.S.C. Section 160(e) provides as follows:

> "The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall

show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact is supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28".

29 U.S.C. Section 160(f) provides as follows:

"Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28,

United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive".

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 6500 Flotilla Street, Los Angeles, California.

On March 25, 1976, I served the within

BRIEF FOR THE AMERICAN BROADCASTING COMPANIES in re: "American Broadcasting Companies, Inc vs. National Labor Relations Board", in the United States Court of Appeals for the Second Circuit, No. 75-4089, 75-4121;

on the attorneys in said action, by placing 2 copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

ANDREW B. KAPLAN
MITCHELL, SILBERBERG & KNUPP
1800 Century Park East
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JOHN ELLIGERS
National Labor Relations Board
1717 Pennsylvania Ave., N.W.
Washington, D. C. 20570

JULIUS REICH
REICH, ADELL & CROST
1411 West Olympic Blvd., Suite 301
Los Angeles, Calif. 90015

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on March 25, 1976, at Los Angeles, California

Jean Dunn

Service of the within and receipt of a copy thereof is hereby admitted this 25th day of March, A.D. 1976.

Copy of Service Enclosed